IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4774 of 1996
With
SPECIAL CIVIL APPLICATION No. 4775 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANDHI HUSEN ALARKHA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SANDEEP N BHATT for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/02/2007

COMMON ORAL JUDGMENT

1. As both the matters are inter-connected and

common questions arise for consideration, they are being considered by this common judgement.

2. The short facts of the case are that the Plot Nos.48 and 49 were allotted to the petitioners, admeasuring 83.82 sq. mtrs., each for residential purpose as per the order dated 5.8.1988. The proceedings were initiated by the District Collector against the petitioners on the ground that they have committed breach of the conditions of the allotment of not to use the residential premises for any other purpose, but in spite of the same, as the petitioners were allegedly using the premises for poultry farm together with the residence, the petitioners were called upon to show cause as to why the land should not be forfeited. The petitioners submitted reply and contended, inter alia, that the aforesaid activity is with a view to maintain the family and in one room the petitioners are already residing. It has also been stated that it is a house-hold activity and, therefore, the matter may be sympathetically considered and the land may not be forfeited and the action may be regularised, if ultimately it is found that there is a breach.

3. The District Collector thereafter passed the order on 21.3.1995, whereby the fine of 40 times revenue was imposed for breach of the condition

and the petitioners were directed to stop the activity of poultry farm in the residential house and if there is failure on the part of the petitioners to close down such activity, the order was passed for forfeiting the land. The petitioners carried the matter in revision before the State Government and the State Government as per the order dated 28th September, 1995 observed that as the use of house for poultry farm was admitted, the breach was proved and, therefore, the order of the Collector did not deserve to be interferred with and hence the revision was dismissed as per the order dated 28th September, 1995. It is under these circumstances, the present petition.

4. Heard Mr.Sevak for Mr.Bhatt, leaned Counsel for the petitioners and Mr.Soni, learned AGP for the State authorities.

5. Upon hearing the learned Counsel for both the sides, it appears that when the lands were allotted to the petitioners by the order dated 5.8.1988, the Condition No.3 did provide for using the land for residential purpose and no other use was permissible without prior permission. However, there are Government Resolutions issued for treating the use of the land for permitting the use of the land for poultry farm and such breach is not to be treated as a serious breach warranting the

forfeiture of the land. Further, from the record, it appears that the petitioners were also simultaneously using the premises for their residential purpose and in the other portion namely; in one room, the same was used for poultry farm. Whether it is a commercial activity together or is for maintenance of the family of the petitioners is an aspect not properly considered by the District Collector. It does appears from the record that it was also for maintenance of the family of the petitioners. Hence, Collector could not have imposed fine of 40 times revenue.

6. Mr.Soni,, learned AGP during the course of hearing relied upon the order passed by the Special Additional Magistrate, Morbi dated 23.1.1995 under Section 133(1) of Cr. P.C. Prohibiting the use of the land for poultry farm on th alleged ground of nuisance and he submitted that such activity was resulting into nuisance and, therefore, the Collector had to exercise the power.

7. Mr.Sevak, learned Counsel for the petitioners submitted that if the order of the State Government is considered, in the said order, there is no reference to the order passed by the Sub-Divisional Magistrate dated 23.01.1995 under CRPC prohibiting the nuisance.

8. It appears that, if there is a direction issued

to discontinue the use of the premises for poultry farm on the ground of nuisance, the same is binding to the petitioners and Mr.Sevak, learned counsel appearing for the petitioners is not in a position to state as to whether the petitioners have successfully carried the matter before the higher forum against the order passed by the Sub-Divisional Magistrate under CRPC or such order is stayed by higher forum. Therefore, as such, the nuisance has got to be stopped by the petitioner, if the order of the Sub-Divisional Magistrate is to operate.

9. As regards the order of the Collector and it s confirmation thereof by the State Government is concerned, it was required for the Collector to examine the aspects of running poultry farm can be said as permissible activity in view of the Government policy or not in a residential house, where a part of it is used for residential purpose. In any case under such circumstances, the Collector had to exercise proper discretion. The perusal of the order passed by the lower authority shows that since the activity was with simultaneous residential use and for maintenance of the family, on the aspects of fine, the matter could be leniently viewed. However, as the use in any case is held as nuisance by the competent authority under Cr.P.C., such activity was required to be stopped and only upon failure to comply the order against nuisance, the

forfeiture could be ordered.

10. It appears that, the petitioners have already given opportunity to stop the activity of poultry farm and the order of forfeiture is only a consequential upon the non-compliance of such directions of the District Collector.

11. Under the above circumstances, the order passed by the Collector and its confirmation by the State Government deserves to be modified to some extent in view of the observations made hereinabove.

12. Hence, the following directions:

a) The order of the Collector and its confirmation thereof by the State Government so far as they relate to imposition of fine is quashed and set aside but the closure of the activity of poultry farm is not disturbed and shall continue to remain in operation, but with modification that the order so far as it relates to forfeiture of land is concerned, the same shall not operate in the event the petitioner, if not has discontinued the activity of poultry farm, discontinues such activity within a period of three months from today. Upon the failure to comply with the earlier direction, the District Collector shall be at the liberty to take action in accordance with law.

12. Petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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